BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 95-90
Regulations Governing Broadcast	)	
Television Advertising	)	

REPLY COMMENTS OF
BAHAKEL COMMUNICATIONS, LTD.

Bahakel Communications, Ltd. (hereinafter "Bahakel") submits these Reply Comments in response to the Commission's June 14, 1995, Notice Of Proposed Rulemaking in the above-referenced docket. Bahakel is a privately-held broadcast company and is the licensee of seven television stations located in medium and small markets.[1]

Bahakel concurs in the joint comments filed by the CBS Television Network and ABC Television Network Affiliate Associations and the Station Representatives Association and opposes repeal of the rule which prohibits television networks from representing their affiliates in the sale of advertising time (47 C.F.R. 73.658(i)) and the rule which prohibits networks from controlling the advertising rates of their affiliates (47 C.F.R. 73.658(h)).

[1]Station WABG-TV, Greenville, Mississippi; Station WAKA-TV, Montgomery, Alabama; Station WBAK-TV, Terre Haute, Indiana; Station WBBJ-TV, Jackson, Tennessee; Station WCCB-TV, Charlotte, North Carolina; Station WOLO-TV, Columbia, South Carolina; Station WRSP-TV, Springfield, Illinois.

Repeal of the network station rep and advertising rules would be contrary to the public interest in at least two respects: (1) Repeal would dramatically increase the economic power and leverage which national networks could and would assert over the independent programming and advertising sales practices of their local affiliates, and (2) Repeal would significantly diminish and lessen competition in the pricing and sale of television advertising in the national spot market.

The national network/affiliate television program distribution system has served the nation well. It has played a critical role in the development of universal free television service. The system's economic efficiencies have made it possible for local communities across the country to receive a mix of nationally and locally produced news, public affairs, information, educational, sports and entertainment programming. More importantly, the national network/affiliate distribution system has advanced the Commission's longstanding policy goal, grounded in Section 307(b) of the Communications Act, of fostering an abundance and diversity of programming responsive to the needs and interests of local communities. The network/affiliate distribution system is not broken--it's not even cracked--it doesn't need fixing.

It is an indisputable fact, of course, that the television industry is experiencing massive change--much of which has been induced by changes in the technology of television, but much, as well, by wholesale changes in Commission broadcast regulatory policy. For example, the Commission's repeal of the financial interest and syndication rules has brought and will continue to bring enormous change in the way television programs are produced and distributed. The most immediate consequence of that regulatory change has been a rush to vertically integrate the production and national distribution of television programs. This has, in turn, produced a new generation of studio-owned networks.

Repeal of the syndication rule, coupled with the repeal of PTAR, has paved the way for the networks to enter the lucrative syndication market. Thus, not only will the networks continue to exhibit programs over the traditional network, they will own these programs and syndicate them in the aftermarket. We do not suggest that any of these changes are, in and of themselves, harmful or inappropriate. But, these changes make it all the more important and all the more necessary for the Commission to retain the other network/affiliate rules to assure that the networks do not dominate the sale of advertising and selection of programming in every affiliate's day part.

There is no question but that because the studio-owned networks are now more heavily invested, financially, in their programs, both in terms of their exhibition on the network and later in syndication, the networks will have the incentive to--and will--exert new economic pressures on affiliates to clear these programs. The surest way for a network to guarantee program clearance is, of course, for it to buy more television stations, increase its national reach and, in so doing, eliminate the necessity of having to engage in negotiations with its local affiliates for program clearance and carriage. The networks, of course, have been doing just that. They are buying as many television stations as the Commission's ownership rules allow and are trying, at the same time, to persuade Congress and the FCC to liberalize those rules. Another--and less costly way--is for the networks to persuade the Commission to repeal the existing rules relating to the network/affiliate relationship. Repeal of these rules would increase the economic power and leverage of networks so that it will be increasingly difficult, if not impossible, for an affiliate ever to say "no" to carriage and clearance of network programs. That, of course, is precisely why the networks have been urging the Commission over the last three years to repeal the network station rep rule, the right to reject rule and various

other rules designed to maintain a modest level of competitive balance in the network/affiliate relationship.

Repeal of the network station rep and advertising rules would allow the networks to sell national and regional advertising for their affiliates. While that may, on its face, look innocuous enough, the reality is that the networks will have an enormous economic incentive to compel their affiliates to allow them--rather than the affiliate and its independent sales representatives--to sell all of the affiliate's national and regional advertising and to set the rates for it. Once a network acquires control over an affiliate's national and regional advertising sales and rates, it will, in turn, be in a position to control all of the affiliate's program decision making. A national network would have the incentive and be in a position to bootstrap and lever its syndicated programming onto the affiliate's schedule. It would be difficult to conceive of a result more inimical to the public interest and more destructive of the notion of local control of the nation's television broadcast stations.

Would the networks exercise the economic leverage given to them if these rules were repealed? Why would they not? A network could--and would--create a new revenue stream for itself by selling, not only its traditional inventory of national and regional advertising in network programs, but by selling, in addition, all the national and regional advertising in an affiliate's non-network programming. Not only would this create a new revenue stream for the network, it would, in addition, (1) allow, as previously noted, the network to manipulate and control the non-network programming decisions of its affiliates and (2) eliminate competition from affiliates and their independent sales representatives in the sale of national spot and regional advertising which, in turn, would allow the network to set and control the rates of all national and regional broadcast television advertising broadcast by their affiliates.

The relationship between a network and its affiliate is unique. It rests on a delicate balance of economic power. The health of this relationship is dependent on many things, not the least of which is a regulatory environment that does not allow improper network influence over affiliates. A network and its affiliate are customers of each other (the affiliate for the network's programming, the network for the affiliate's audience) and, in the sale of national advertising, the network and its affiliate are direct competitors of each other. There is an inherent conflict of interest in the control by a network of its affiliates' national advertising rates and sales. If networks are permitted to serve as advertising agents for themselves as well as their affiliates, they will inevitably serve their own interests at the expense of their affiliates.

There is considerable confusion and misunderstanding about the perceived influence affiliates have as a result of recent increases in network compensation. The ever-present threat of network disaffiliation is as real today as it was when the Commission's various network rules were adopted. Nothing has changed in that regard, and affiliates have no more leverage today than in years past in effecting changes in the network affiliation contract to lessen network control over program decisions.

The role of independent sales representatives in promoting healthy competition between affiliates and networks is critical. These representatives make national spot advertising efficient, economical and appropriately targeted. Without access to such independent representatives, affiliates will be at a great disadvantage in competing for national advertising dollars. This would be a loss for affiliates and, ultimately, advertisers and consumers.

The Commission recognized the uniqueness of the network/affiliate relationship when it adopted its network sales rep and advertising rules. The rationale which underpinned the rules at the time of their adoption is equally valid today. The Commission, in adopting these rules, said:

> It is undeniable that in at least some circumstances the interests of networking, as such, conflict with the furtherance of spot sales. This is an inherent and inescapable result of the simple fact that both compete for station time and advertising revenue.[2]

The presence of new video competitors has not made it any more possible for a single corporate entity to compete with itself. Network representation of affiliates for spot sales a priori entails a conflict of interest that would impinge upon an already intricate structure and balance of relationships.

In short, the acknowledged changes in television broadcasting, both accomplished and incipient, have generated an atmosphere of instability that warrants caution in considering changes to the network/affiliate arrangement. This is particularly so where, as here, the rule in question is part of a nexus of interrelated rules and relationships.

In conclusion, it is significant that no one has suggested to date any great harm caused by the network representation and control-of-advertising-rates rules, nor has anyone pointed to overwhelming public interest benefits in changing them. These rules pose no noticeable burden on the Commission's resources or on broadcast networks. In the absence of a compelling showing that they disserve the public interest, the rules should continue in force. The burden should be on those advocating their abolition. If a particular network can make a persuasive showing that application

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[2] Network Representation of Stations in National Spot Sales, 27 FCC 697, 715 (1959), recon. denied, 28 FCC 447 (1960), aff'd sub. nom., Metropolitan Tel. Co. v. FCC, 289 F.2d 874 (D.C. Cir. 1961).

of the rules is disproportionately unfair or harmful to that network, the Commission may consider a waiver in light of the particular facts presented. Failing such a showing, however, the rules should remain in force. In these circumstances, with the premises of the rules still valid and the industry at an unstable time, no party has demonstrated need for changing the regulatory structure governing the relationship between networks and affiliates. Therefore, Bahakel respectfully submits that the network representation and control-of-advertising-rates rules should be retained in their present form.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathy Shearer, of the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certify that a copy of the foregoing Reply Comments were mailed, postage prepaid on this 27th day of September, 1995, to the following:

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